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REMARKS

Applicant is in receipt of the Advisory mailed 08/02/02. Applicant wishes to thank Examiner Nguyen for the courtesy extended to the undersigned in the telephone interview initiated by the undersigned today, August 7. In such telephone interview, the undersigned proposed amending Claim 1 to add a strap as a separate element of the bundle of marked lumber. Basis for strap (28) is found in the specification at page 17 lines 29-34 and elsewhere, as well as in FIGURE 5. ]

The examiner agreed to consider such amendment in order to reduce the number of issues for appeal. Accordingly, applicant submits herewith the proposed amendment to Claim 1. As amended, Claim 1 now includes "a strap" as a separate and distinct element of the bundle of lumber.

Applicant submits that no reference of record teaches or suggests a bundle of lumber bearing stud locator markings, and including at least one strap securing the lumber pieces together as the bundle. Accordingly, Claim 1, and Claims 2-11 dependent therefrom, are patentable over the references of record. Reconsideration of the application is requested in light of the foregoing amendments and following remarks.

Applicant wishes to further draw the examiner's attention to a topic raised in Amendment B, received in the PTO on July 3, 2002, at page 8 second full paragraph, line 8. As suggested there, the Thomas reference teaches use of masking tape as a medium for applying marking to pieces of framing lumber. It is well known that masking tape comprises a paper-like substrate, coated on one surface with a coating of adhesive. It is also well known that masking tape adhesive is somewhat mobile. Namely, one can apply masking tape to a surface and, while the tape does not volunteer to move, the tape can be moved small distances, especially if one does not take special care in firmly bonding all areas of the tape to the underlying surface.

Thomas teaches securing his tape in the form of a commercially available rollable masking type tape base...adhesively secured to the... bottom...[and] top plate[s]... prior to stud assembly. Namely, the tape is to be applied at the construction site.

It is further well known that construction sites are dirty and/or dusty, and that respective construction materials can as well be quite dirty and/or dusty. In that

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context, where the stud to which the tape is to be applied is dusty and/or dirty, the probability that the tape could be moved, misplaced after being applied to the stud, is quite high. Further, consider that the process of attaching a stud to a plate is generally stressful on both the stud and the plate. For example, where the stud/plate combination is partially constructed, and a stud is to be added to the partial assembly, it is quite common that the stud might fit a little tight, or a little loose, for example where one of the plates is not perfectly straight. In such instance, the stud has to be forced side-ways into its proper place. That means that the stud is placed as close as possible to the correct location, then is e.g. hammered sideways until it reaches the proper position.

Under such scenario employing the Thomas reference, where the stud is hammered sideways, the stud is sliding on the outer (substrate) surface of the tape. As the stud is hammered, the stud applies substantial force, aligned with the length of the stud, against the surface of the tape. Since, masking tape is relatively weak compared to the stud, the end of the stud will readily tear the tape. The torn tape will bunch up in front of the end of the stud and will be moved ahead of the stud, thereby displacing the tape markings from the desired location. The locator markings of the tape become useless when the markings are so moved.

By contrast, with the markings disposed directly on the plate lumber piece, no amount of forced movement of the stud is effective to displace the markings, short of structural damage to the plate in the process of such assembly. Accordingly, the marked lumber of the invention defines new capability to tolerate the strenuous conditions typically extant at construction sites. No reference teaches or suggests a marking system which tolerates such strenuous conditions, whereby the invention provides a new level of technical capacity not available, not obvious, from the references of record.

Accordingly, the differences between the claimed invention and any use of Thomas or combination of Thomas with any other reference, are such as to clearly arise to patentable novelty. Thus, applicant respectfully requests that all rejections on the basis of 35 U.S.C. 103(a) be withdrawn, and that all claims, especially Claims 1-11 drawn to a bundle of lumber, be indicated as allowable.

Applicant thus submits that all claims as presented herein are allowable over all references of record. Allowance is respectfully solicited. No fee is believed to be due.

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Should any fee be properly due, or if any refund is due, kindly charge same, or credit any overpayment, to Deposit Account 23-2130.

Please feel free to contact me with any questions, comments or concerns, at the telephone number listed at the end of this document.

Respectfully submitted,  
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APPENDIX AVERSION WITH MARKINGS TO SHOW CHANGES MADEIn the Claims

Kindly amend Claim 1 as indicated following.

1. A bundle of framing lumber product, comprising:

- (a) a plurality of elongate pieces of lumber operative to assist in layout and assembly of a wall, wherein such wall comprises a bottom plate and a top plate, and a plurality of dimension studs extending between the bottom plate and the top plate at one or more of a limited number of pre-determined [standard] stud spacings along the bottom plate and the top plate, wherein respective ones of said elongate pieces of lumber are operative for use in the bottom plate and/or the top plate, said respective elongate pieces of lumber having first and second ends and lengths therebetween, front surfaces and back surfaces, opposing sides extending between the front and back surfaces along the lengths thereof, and thickness dimensions between the front surfaces and the back surfaces, and between opposing sides thereof; [and]
- (b) a plurality of stud locator markings spaced along the lengths of said elongate pieces of lumber at one or more surfaces which assist in defining respective ones of the thickness dimensions of said elongate pieces of lumber, each said stud locator marking defining a position for placement, on the respective said elongate piece of lumber, of an end of a stud dimension lumber piece having opposing front and back surfaces and a thickness dimension therebetween, to be joined to the respective said elongate piece of lumber, the respective said stud locator markings on the respective said elongate pieces of lumber indicating the positions where the front and back surfaces of respective stud lumber pieces are to intersect the respective said elongate piece of lumber; and

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(c) at least one strap securing said plurality of elongate pieces of lumber together as said bundle,

the stud locator markings being spaced from each other along the lengths of said elongate pieces of lumber at at least one of the limited number of pre-determined stud spacings[,

each of the plurality of stud locator markings comprising marking material deposited directly on the respective said elongate piece of lumber at a such respective surface which assists in defining a such thickness dimension of the respective said elongate piece of lumber].